ity Ins. Co., 25 Fed. Rep. 315; see also *dictum* in *Bigelow* v. *Ins. Co.*, 93 U. S. 284, 288, are synonymous expressions and include all cases of voluntary self-destruction, with an understanding of the physical character of the act, whether the act is the result of an insane condition of the assured's mind or not.

PRESUMPTIONS.—*Evidence.*—Where a person is found drowned without any marks of violence on his person, that fact is, of itself, no evidence of suicide: *Ins. Co.* v. *Delpeuch*, 82 Penn. St. 225; nor is the fact that the deceased was a spiritualist and believed he would enjoy the pleasures of this life in the next, admissible in evidence under such circumstances to establish suicide: *Ins. Co.* v. *Delpeuch*, *supra*.

The presumption is ordinarily in favor of a natural death: *Hancock* v. *Ins. Co.*, 34 Mich. 42; *Ins. Co.* v. *Hogan*, 80 Ill. 35.

In *Terry's Case*, Mr. Justice MILLER instructed the jury, as we have seen, that "there is no presumption of law, *prima facie* or otherwise, that self-destruction arises from insanity," and the rule, as stated by him is supported by the cases: *Weed* v. *Ins. Co.*, 41 N. Y. (Sup. Ct.) 476; *Phadenhaur* v. *Ins. Co.*, 7 Heisk. 567; *Coffey* v. *Ins. Co.*, 35 N. Y. (Sup. Ct.) 314.

In *Schultz* v. *Ins. Co.*, 40 Ohio St. 217, it was held that the presumption in case of suicide, is that it was committed while sane; but the true rule is probably as suggested in a New York case, that there is no presumption either way: *Coffey* v. *Ins. Co.*, 35 N. Y. (Sup. Ct.) 314. In two cases it has been held that where there is other evidence of insanity the fact of suicide may be considered in connection with that evidence: *Scheffer* v. *Life Ins. Co.*, 25 Minn. 534; *Weed Ins. Co.*, 35 N. Y. (Sup. Ct.) 386.

BENJAMIN F REX.

St. Louis, Mo.

Supreme Court of Minnesota.

HAMMOND *v.* PEYTON, ASSIGNEE.

As a general rule, the equitable lien of the grantor of real estate for the price thereof is not assignable, although there may be exceptions to this rule in favor of persons who merely stand as representatives of the grantor.

The lien itself is not in accordance with the policy of the law, and should be restricted rather than fostered.

APPEAL from an order of the District Court, Saint Louis county.

The opinion of the Court was delivered by

BERRY, J.—The equitable lien of a grantor for the price of real estate has been recognised by this court in *Selby* v. *Stanley*, 4 Minn. 65, Gil. 34; *Doughaday* v. *Paine*, 6 Minn. 443, Gil. 304; *Duke* v. *Balme*, 16 Id. 306, Gil. 270; and *Walter* v. *Hanson*, 24 N. W. Rep. 186.

But whether the lien is assignable, or whether, if assignable, it passes upon the transfer of the debt which it secures as an incident

thereof, and without any express or formal assignment, has not been here determined. It is to be regretted that the idea of a grantor's lien was ever admitted, especially in this country, where registration of transactions affecting real estate is so generally provided for and practised. It is, however, recognised in England, and in a majority of the states of the Union, though it is utterly repudiated by several, and in others has been abolished by statute. See 3 Pom. Eq. Jur. § 1249; Bisp. Eq. 353; Tiedm. Real Prop. 292, and notes.

In *Mackreth* v. *Symmons*, 15 Ves. 329, the leading case, Lord ELDON appears to look upon the doctrine of lien with disfavor; and see in the same direction, *Kettlewell* v. *Watson*, 21 Ch. Div. 702; and, in this country, we find still more emphatic protests against it, and regrets that it should have ever been allowed to gain a footing: *Bayley* v. *Greenleaf*, 7 Wheat. 46, MARSHALL, C. J.; *Briggs* v. *Hill*, 6 How. (Miss.) 362; 3 Pom. Eq. Jur. 256, note 1; *Simpson* v. *Mundee*, 3 Kan. 172; *Philbrook* v. *Delano*, 29 Me. 410; SHEPLEY, C. J.; *Ahrend* v. *Odiorne*, 118 Mass. 261, GRAY, C. J.; *Kauffelt* v. *Bower*, 7 S. & R. 64, GIBSON, J.; *Welborn* v. *Bonner*, 9 Ga. 82. Perhaps one of the strongest indorsements of the doctrine is found in *Manly* v. *Slason*, 21 Vermont 271, by REDFIELD, C. J., in 1849; but in 1851 it was utterly wiped out by the legislature of that state. "As to its origin and rationale," says Mr. Pomeroy, 3 Eq. Jur. 1252, citing many authorities, "there has been a great diversity of opinion. It has been accounted for as a trust, as an equitable mortgage, as arising from a natural equity, and as a contrivance of the chancellors to evade the unjust rule of the early common law by which land was free from the claims of simple contract creditors." And this author, rejecting all these theories himself, accounts for it as an instance of the "higher importance, consideration and value given to real than to personal property." And in sect. 1251 of the same work it is well said, that "no other single topic belonging to equity jurisprudence has occasioned such a diversity, and even discord, of opinion among the American courts as this of the grantor's lien. Upon nearly every question that has arisen as to its operation, its waiver or discharge, the parties against whom it avails, and the parties in whose favor it exists, the decisions in different states, and sometimes even in the same state, are directly conflicting. It is practically impossible to formulate any general rule representing

the doctrine as established throughout the whole country." See cases cited. See also, 1 Perry Trusts 234.

We have referred to these matters for the purpose of showing the standing of the doctrine of a grantor's lien, and the disposition and tendency of the courts and of legislation towards it, and contenting ourselves with a reference to the authorities already cited, without here entering into a detailed presentation of them, we feel warranted in saying, that this disposition and tendency is at least not to extend the doctrine beyond what may be regarded as the comparatively well settled and established rules of equity in reference to liens of this kind. In other words, the doctrine is not one to be fostered and encouraged, or allowed to spread, but rather to be kept strictly within limits; and this upon the grounds that it is unnecessary for the protection of a grantor, who may readily, cheaply, and conveniently secure himself by a mortgage which can be put upon record; that the lien is in the nature of a secret and invisible trust, and therefore opposed to the policy and spirit of our registration system; that a sale subject to it is calculated to give a false appearance of credit, and that it is contrary to the spirit and policy of our laws, which favor the free transmission of real estate under such conditions that a purchaser may, with reasonable certainty, know what is the precise state of the title which he acquires, and without being subject to the doubt and uncertainty which will be occasioned by such questions as whether there was a grantor's lien, or whether, if there was one, it has been waived or discharged, and whether it has been assigned or not, or whether, if assigned, it still continues; all questions *dehors* any record.

The application of the foregoing considerations, which we propose to make in this case, will appear hereafter. We have been unable to find any adjudication in the English courts (where the doctrine of vendors' lien originated), squarely to the effect that a grantor's lien is assignable. The case of *Dryden* v. *Frost*, 3 Mylne & C. 670, cited by counsel and by many text-writers, does not, in our judgment, go to that extent. While there is in this country a diversity of opinion, in most of the states the lien is held to be personal to the grantor and not assignable, and it would, of course, follow that in those states the transfer of the debt, either with or without an assignment of the lien, would not pass the lien to the transferee. This result of the authorities in this country may be verified by reference to the cases cited in 3 Pom. Eq. Jur.,

§ 1254, note; and see also, 1 Lead. Cas. Eq., 4th Am. ed. 492; Tiedm. Real Prop., § 294; 2 Sugd. Vend. 398, note by Perkins; Bisp. Eq., § 356; *Philbrook* v. *Delano*, 29 Me. 410; *Ahrend* v. *Odiorne*, 118 Mass. 261; *Simpson* v. *Mundee*, 3 Kan. 172; *Baum* v. *Grigsby*, 21 Cal. 173; *Welborn* v. *Bonner*, 9 Ga. 82; *Briggs* v. *Hill*, 6 How. (Miss.) 362; 1 Jones Mort., § 212. In this conflict of authority as to the assignability of grantor's liens, we propose, in accordance with the consideration before mentioned, to adopt for this state the rule which is certainly sanctioned by a great, and we think a preponderant, weight of authority, and which commends itself to our judgment as most wholesome, best calculated to promote the general interest, and most in accordance with the spirit and policy of our laws; and this is in the direction of restricting rather than extending the scope of the lien. We therefore hold that a grantor's lien is not generally assignable. We are not, however, to be understood as holding that it may not descend to the grantor's representative, nor that it may not pass to his assignee for the benefit of the creditors, nor that there may not be some other case in which it may pass to some person who may be regarded as merely representing the grantor and his interest, and not as acting simply for himself.

It may be suggested that the conclusion which we have reached is inconsistent with analogies of the law; but to this it may well be answered that this lien is a mere creature of equity, and therefore entitled to be recognised only as equity has created it and as it is. Aside from this, the considerations before presented distinguish it from such liens as, instead of being disfavored, are favored in law; as, for instance, mechanics' liens. These being created by statute, without restrictions as to assignability, must be regarded as favored in law, and therefore entitled to beneficial construction. This disposes of the case; but we may add, that if there were any doubt about the correctness of our conclusion, it is by no means clear that the acts of plaintiff, claimed to amount to a waiver, would not lead to the same result.

Order sustaining the demurrer affirmed.

The question of the assignability of a vendor's or grantor's lien is in inextricable confusion in this country. The distinction between a vendor's lien and a grantor's lien has been lost sight of or abandoned. The grantor's lien is equitable, exists only in equity jurisprudence, and is of purely equitable cognisance. The entire legal estate and the actual possession vests in the grantor. Thus there are two classes of cases: 1. Where there is an absolute deed given

which conveys away the legal title. 2. Where only a bond for a deed is given to convey when the purchase-money is paid. The vendor who retains his legal title and merely gives his bond to convey is in a very different condition in regard to the land he has sold than he who has made an absolute deed conveying away the legal title. When the legal title is retained, the transaction on its face shows that it is the intention to hold such title as security. It is equivalent to conveying the land and taking a reconveyance by way of mortgage. In such a case the question of want of notice cannot arise, for he who purchases from one whose only title is a bond to convey, must know the rights of the original holder or be guilty of such negligence as is evidence of fraud. It will be seen that the doctrine of the cases which hold that the assignee of a note given for the purchase-money of land does not acquire the lien which the vendor himself had, can have no application to cases where the legal title does not pass.

The vendor's lien is held to be non-assignable in Arkansas, California, Georgia, Illinois, Iowa, Maryland, Mississippi, Missouri, North Carolina, New York, Ohio and Tennessee. Where an express assignment is thus forbidden, it follows that an equitable assignment by way of subrogation is impossible. Where by express arrangement the purchase-money note is given to a third person, instead of the grantor, such person is generally held entitled to the lien: *Mitchell* v. *Butt*, 45 Ga. 162; *Nichols* v. *Glover*, 41 Ind. 24; *Hamilton* v. *Gilbert*, 2 Heisk. 680; *Francis* v. *Wells*, 2 Col. 660; *Perkins* v. *Gibson*, 51 Miss. 699; *Lathan* v. *Staples*, 46 Ala. 462; *Campbell* v. *Roach*, Id. 667.

In a note to the leading case of *Mackreth* v. *Symmons*, 1 Lead. Cas. in Eq. 494, it is said: "It seems to be settled that if a debt is secured by an express lien, as where there is an agreement for a lien which creates an equitable mortgage, or where the vendor has not parted with the legal title, an assignment of the debt entitles the assignee to the benefit of the pledge: *Graham* v. *McCampbell*, Meigs 52; *Eskridge* v. *McClure*, 2 Yerg. 84; *Tanner* v. *Hicks*, 4 S. & M. 294. In some states it appears to be settled that there is no distinction between an express and implied lien as to transferability, and that an assignment of the note or bond for the purchase-money carries the lien: *Kenny* v. *Collins*, 4 Little 289; *Johnston* v. *Gwathmey*, Id. 317; *Eubank* v. *Poster*, 5 Mon. 285; *Edwards* v. *Bohannan*, 2 Dana 95; *Honore* v. *Bakewell*, 6 B. Mon. 67; *Ripperdon* v. *Cozine*, 8 Id. 465; *Fisher* v. *Johnson*, 5 Ind. 492.

Arkansas: The existence of the vendor's lien was recognised in *Schall* v. *Biscoe*, 18 Ark. 142; *Lavender* v. *Abbott*, 30 Id. 192. The vendor's lien cannot be transferred by assignment or by subrogation: *Schall* v. *Biscoe*, 18 Ark. 142; *Hutton* v. *Moore*, 26 Id. 382. The law from the time the memory of man runneth not to the contrary has been that the vendor's lien was personal and not assignable: *Jones* v. *Dos*, 2 Ark. 519; not assignable unless under some peculiar circumstances: *Crawley* v. *Riggs*, 24 Ark. 563; *Carlton* v. *Buckner*, 28 Id. 66; *Moore* v. *Andres*, 14 Id. 634; *Blevin* v. *Rogers*, 32 Id. 258; may be enforced by the heirs of the vendor: *Lavender* v. *Abbott*, 30 Id. 192.

Georgia: In *Wellborn* v. *Williams*, 9 Ga. 86, NISBET, J., after a careful examination of many of the authorities, held that the mere assignment of the purchase-money note did not carry the lien. "The vendor's is a secret, invisible, unregistered lien. We are wholly disinclined to extend it to the assignee of the notes;" followed in *Webb* v. *Robinson*, 14 Ga. 216. Lien abolished by statute: Code of Ga. 1873, sec. 1997.

Maryland: Vendor's lien recognised in *Magruder* v. *Peter*, 11 Gill & J. 217;

Carr v. *Hobbs*, 11 Md. 285. Held not assignable: *Dixon* v. *Dixon*, 1 Md. Ch. 220; *Inglehart* v. *Arminger*, 1 Bland's Ch. 519; *Moreton* v. *Harrison*, Id. 491. In *Schnebly* v. *Ragan*, 7 Gill & J. 124, the court inclined to the belief that the assignee might get the benefit of the lien by express agreement, but held that where the vendor assigned the purchase-money note "without recourse," the lien, being personal, was extinguished.

Missouri: Lien recognised in *Marsh* v. *Turner*, 4 Mo. 553; *Delassus* v. *Poston*, 19 Id. 425; not assignable: *Pearl* v. *Heervey*, 70 Mo. 160; except where the vendor retains the legal title: *Adams* v. *Cowherd*, 30 Id. 459.

Ohio: Lien recognised in *Williams* v. *Roberts*, 5 Ohio 35; *Anketel* v. *Converse*, 17 Ohio St. 11; held not assignable in *Brush* v. *Kinsley*, 14 Ohio 20; *Horton* v. *Horner*, Id. 437; *Jackman* v. *Hallock*, 1 Id. 318.

Tennessee: Lien recognised in *Eskridge* v. *McClure*, 2 Yerg. 84; *Ross* v. *Whitson*, 6 Id. 50; not assignable: *Durant* v. *Davis*, 10 Heisk. 522; *Tharpe* v. *Dunlap*, 4 Id. 674; transfer of the purchase-money note extinguishes the lien: *Gann* v. *Chester*, 5 Yerg. 205. See *Claiborne* v. *Crockett*, 3 Id. 27; *Graham* v. *McCampbell*, Meigs 52; *Green* v. *Demoss*, 10 Humph. 371.

Iowa: The assignee of a note given for the purchase-money of land cannot in equity enforce the original lien of the vendor against the land: *Dickenson* v. *Chase*, 1 Morris 492; *Crow* v. *Vane*, 4 Iowa 436. Lien recognised in *Grapengether* v. *Feervary*, 9 Iowa 163; *Johnson* v. *McCrew*, 43 Id. 555. Must be reserved by way of mortgage or other duly executed instrument: Rev. Stat. 1873, sec. 1940.

Illinois: Vendor's lien recognised in *Dyer* v. *Martin*, 4 Scam. 148; *Keith* v. *Horner*, 42 Ill. 524; *Kirkham* v. *Boston*, 67 Id. 599; *Moshier* v. *Meek*, 80 Id. 79; but is personal and cannot be assigned: *Small* v. *Stogg*, 95 Ill. 39; *Wing* v. *Goodman*, 75 Id. 159; *Moshier* v. *Meek*, 80 Id. 79; *Carpenter* v. *Mitchell*, 54 Id. 126; *Richards* v. *Leaming*, 29 Id. 431. Will pass to personal representative, but cannot be made the subject of sale or transfer by contract: *Keith* v. *Horner*, 32 Ill. 534; *McLaurie* v. *Thomas*, 39 Id. 291; *Dayhuff* v. *Dayhuff*, 81 Id. 499. Assignment of the note destroys the lien: *Moshier* v. *Meek*, 80 Ill. 79. Lien is not assignable even by express language: *Markoe* v. *Andreas*, 67 Ill. 34; but it may be made assignable by an express reservation in the deed, which when recorded is in effect a mortgage: *Carpenter* v. *Mitchell*, 54 Ill. 126.

California: Lien recognised in *Salmon* v. *Hoffman*, 2 Cal. 138; *Gallagher* v. *Mars*, 50 Id. 23. In *Baum* v. *Grigsby*, 21 Cal. 173, FIELD, J., said: "The cases which deny that the lien passes with the personal security of the vendee do not rest, except in a few instances, upon the want of a special assignment from the vendor, but upon the ground that the lien is in its nature unassignable. There is a marked distinction between the lien of a vendor, after absolute conveyance, and the lien of a vendor where the contract of sale is unexecuted. In the latter case the vendor holds the legal estate as security for the purchase-money; he can assign his contract with the conveyance of the title, and in such case the assignee will acquire the same rights and be subject to the same liabilities as himself: *Sparks* v. *Hess*, 15 Cal. 194; *Taylor* v. *McKinney*, 20 Id. 618. In the former case the vendor retains a mere equity, which to become of any force or effect must be established by the decree of the court: *Lewis* v. *Covilland*, 21 Cal. 179; *Williams* v. *Young*, Id. 227; *Porter* v. *Brooks*, 35 Id. 199; *Ross* v. *Heintzen*, 36 Id. 313.

New York: Lien recognised in *Warner* v. *Alstyne*, 3 Paige 513; *Chase* v.

Peck, 21 N. Y. 581; *Stafford* v. *Van Rensselaer*, 9 Cow. 316; *Garson* v. *Green*, 1 Johns. Ch. 308; *Smith* v. *Smith*, 9 Abb. Pr. N. S. 420. In *White* v. *Williams*, 1 Paige 502, Chancellor WALWORTH held that the vendor's lien did not pass by implication to the assignee of the note, but intimated that it might oe transferred by special agreement. See *Smith* v. *Smith*, 9 Abb. Pr. N. S. 420. In *Hallock* v. *Smith*, 3 Barb. 272, STRONG, J., said: "If the note or bond is assigned or transferred to a third person for his benefit, the security is gone forever. The reason is, there is no peculiar equity in favor of third persons. But that does not apply where, as in this case, the transfer is only for the purpose of paying the debt of the vendor, so far as it may be available, and is therefore for his benefit; there the equity continues."

Mississippi: The existence of lien recognised in *Dodge* v. *Evans*, 43 Miss. 570; *Davidson* v. *Allen*, 36 Id. 419. Lien personal and not assignable: *Briggs* v. *Hill*, 6 How. 362; *Lindsey* v. *Bates*, 42 Miss. 396; *Walker* v. *Williams*, 1 Geo. 165; *Harvey* v. *Kelly*, 41 Miss. 490; *Skaggs* v. *Nelson*, 3 Cush. 88; *Pitts* v. *Parker*, 44 Miss. 247. *Rutland* v. *Brister*, 53 Id. 683. Lien is destroyed by assignment of the purchase-money note: *Pitts* v. *Parker*, *supra*. But in case the vendor is compelled to take up the note the lien revives: *Lindsey* v. *Bates*, 42 Miss. 397; *Stratton* v. *Gold*, 40 Id. 778; see *Perkins* v. *Gibson*, 51 Id. 699; *Cotton* v. *McGehee*, 54 Id. 510. The vendor's lien is not lost by assignment, where title bond only is given. The effect of the title bond, so far as it effects the securing of the purchase-money, is a conveyance of the title and the taking of a mortgage: *Tanner* v. *Hicks*, 4 S. & M. 294; citing *Dollahite* v. *Orne*, 2 Id. 590; *Parker* v. *Kelly*, 10 Id. 184; *Wilkins* v. *Humphrey*, 1 Cush. 311; *Robinson* v. *Harbour*, 42 Miss. 795; *Pitts* v. *Parker*, 44 Id. 247; *Moore* v. *Lackey*, 53 Id. 85; *Mhoon* v. *Wilkerson*, 47 Id. 633.

Alabama: Lien recognised: *Gordon* v. *Bell*, 50 Ala. 213; *Wood* v. *Sullens*, 44 Id. 686. The transfer of the debt carries the lien: *Simpson* v. *McAllister*, 56 Ala. 228; *Wells* v. *Morrow*, 38 Id. 125; *White* v. *Stover*, 10 Id. 441; *Grigsby* v. *Hair*, 25 Id. 327; *Roper* v. *McCook*, 7 Id. 319; *Plowman* v. *Riddle*, 14 Id. 169. But if the purchase-money note be assigned "without recourse," or in any other manner which cuts off the vendor's liability, the lien is held not to pass: *Hall* v. *Click*, 5 Ala. 363; *Grigsby* v. *Hair*, 25 Id. 327; *Bankhead* v. *Owen*, 60 Id. 457; *Barnett* v. *Riser's, Ex.* 63 Id. 347; *Walker* v. *Carroll*, 65 Id. 61. Where the lien passes by assignment and the note is returned to the vendor unpaid, he may enforce the lien: *White* v. *Stover*, 10 Ala. 441; *Roper* v. *McCook*, 7 Id. 318; *Hall's Exr's.* v. *Click*, 5 Id. 363; *Kelly* v. *Payne*, 18 Id. 373.

Indiana: Lien recognised in *Diebler* v. *Barnwick*, 4 Blackf. 339; *Yargan* v. *Skriver*, 26 Ind. 364. A transfer of the debt carries the lien: *Nichols* v. *Glover*, 41 Ind. 24; *Johns* v. *Sewell*, 33 Id. 1; *Wiseman* v. *Hutchinson*, 21 Id. 40; *Kern* v. *Hazlerigg*, 11 Id. 443.

Kentucky: Lien recognised in *Thornton* v. *Knox*, 6 B. Mon. 74; *Tiernan* v. *Thurman*, 14 Id. 277. May be assigned: *Broadwell* v. *King*, 3 B. Mon. 449; *Honore's Exr's* v. *Bakewell*, 6 Id. 67; *Ripperdon* v. *Cozine*, 8 Id. 465; *Enbank* v. *Paston*, Id. 286; *Edwards* v. *Bahannon*, 3 Dana 98; *Johnston* v. *Gwathmey*, 4 Little 317; *Kinny* v. *Collins*, Id. 289; *Thoms* v. *Wyatt*, 5 Moore 132.

Texas: Lien recognised in *Briscoe* v. *Bronaugh*, 1 Tex. 326; *Yarborough* v. *Wood*, 42 Id. 91. Held assignable in *Debruhl* v. *Maas*, 54 Tex. 464; *White* v. *Downs*, 40 Id. 225; *Watt* v. *White*, 30 Id. 421.

Lien recognised in Michigan: *Carroll*

v. *Van Renselaer*, Harr. 225; *Payne* v. *Avery*, 21 Mich. 524. New Jersey: In *Van Dore* v. *Todd*, 2 Green 397; *Corlus* v. *Howland*, 26 N. J. 311. Wisconsin: In *Tiebey* v. *McAlister*, 9 Wis. 463; *Willard* v. *Reas*, 26 Id. 540. Colorado: In *Francis* v. *Wells*, 2 Col. 660. Florida: In *Bradford* v. *Martin*, 2 Fla. 463. District of Columbia: In *Ford* v. *Smith*, 1 McArthur 592. Oregon: In *Pease* v. *Kelly*, 3 Oreg. 417.

Vendor's lien denied and repudiated in Kansas: *Simpson* v. *Mundee*, 3 Kans. 172; *Smith* v. *Rowland*, 13 Id. 246. South Carolina: *Wragg* v. *Compt. Gen.*, 2 Dessaus. 509. North Carolina: *Womble* v. *Battle*, 3 Ired. Eq. 182; *Cameron* v. *Mason*, 7 Id. 180. Maine: *Gilman* v. *Brown*, 1 Mason 192; *Philbrook* v. *Delano*, 29 Me. 410. Massachusetts: *Wright* v. *Dane*, 5 Met. 485; *Ahrens* v. *Odiorne*, 118 Mass. 261. Pennsylvania: *Kauffelt* v. *Bower*, 7 S. & R. 64; *Zentmyer* v. *Mittower*, 5 Penn. St. 403; *Stephens's Appeal*, 38 Id. 9.

Left in doubt in Connecticut: *Atwood* v. *Vincent*, 17 Conn. 575; *Watson* v. *Wells*, 5 Id. 468; *Chapman* v. *Beardsley*, 31 Id. 115. New Hampshire: *Arlien* v. *Brown*, 44 N. H. 102. Rhode Island: *Perry* v. *Grant*, 10 R. I. 334. In Vermont Virginia and West Virginia, upheld by judicial decisions, but now abolished by statute. In West Virginia and Virginia it may be reserved on the face of the deed. See Vermont Statutes of 1851, Ch. 47; *Manly* v. *Slason*, 21 Vt. 271. Virginia: Code 1873, Ch. 115, sec. 1; *Wade* v. *Greenwood*, 2 Robt. 475. West Virginia: Code 1870, Ch. 78, sec. 1.

CHARLES BURKE ELLIOTT.
Minneapolis, Minn.

Supreme Court of Illinois.

KELLEY *v.* PEOPLE.

An act providing increased penalties for second and subsequent offences of burglary, grand larceny, horse-stealing, robbery, forgery, or counterfeiting, is not unconstitutional, either as visiting penalties disproportioned to the offences, or as placing the defendant in jeopardy a second time for the same offence.

Where such act provides that, whenever any person having been convicted of either of several enumerated crimes shall thereafter be convicted *of any one of such crimes*, he shall be liable to such increased penalty it does not require that the second offence dealt with therein shall be a second instance of the identical crime for which the offender was first convicted. Therefore, a conviction of burglary, accompanied by proof of a former conviction of robbery, constitutes a case of second offence.

The fact that the former conviction, which is proved in order to constitute a second offence, was erroneous, will not prevent the operation of the statute, if such error did not deprive the court of jurisdiction.

Conceding that a trial by the court of a criminal case, the defendant having waived a jury, is erroneous, yet such an error will not make the conviction void; and such a conviction of one of the offences enumerated in the above-cited act will render a subsequent conviction of any of those offences a second conviction within the meaning of the act.

The fact that the constitution of the state has been disregarded in the course of judicial proceedings will not render the judgment in which such proceedings terminate